IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE GHULAM MOHAMMED

WRIT APPEAL NO.2107 OF 2004,

W.P.Nos.25082, 25237, 25240, 23646, 21814 OF 2004, 2108,

234, 2109, 2136, 3963, 1367, 2154, 2724, 2726

AND 3229 0F 2005

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WRIT APPEAL NO : 2107 of 2004

Writ Appeal under Clause 15 of the Letters Patent against the Order dated 06/12/2004 in WP NO : 21814 OF 2004 on the file of the High Court.

Between:

Dr. D. Peraiah Chetty S/o Venkata Swamy
R/o Arundalpet 2/3-4 Cross Road, Guntur, Having Permanent R/o Ravurpet, Vetapalem Post, Bapatla Taluq, Guntur District

..... APPELLANT

AND

1 Medical Council of India, having its Office at Aiwan-E-Galib Marg, Kotla Road, Mata Sundari College (For Women), New Delhi
2 The Secretary, medial Council of India Aiwan-E-Galib Marg, Kotla Road, Mata Sundari College (For Women), New Delhi
3 The Registrar, A.P State Medical Council, Sultan Bazar, Hyderabad
4 The Union of India, rep by Secrtary, Ministryof Health, New Delhi
5 The Director of Medical Education, Sultan Bazar, Koti, Hyderabad
6 Katuri Medical College & Hospital, Chinakondrapadu, Guntur District, rep by Principal

7 Dr. Pinnamaneni Siddartha Institute of Medical Sciences, Chinaoutpalli, Gannavaram Krishna District rep by Principal
8 PES. Institute of Medical Scienes, Kummpam, Chittoor Distric rep by Principal
9 Warangal Institute of Medical Sciences, Warangal, Warangal District rep by Principal
10 Chalmeda Anand Rao Institute of Medical Sciences, Karimnagar, Karimnagar District rep by Principal

.....RESPONDENTS

Counsel for the Appellant: MR.CH.RAVINDRA BABU

Counsel for the Respondents NO.1&2: MR.S.NIRANJAN REDDY

Counsel for the Respondent No.3: Mr. MOVVA CHANDRA SEKHAR RAO

Counsel for the Respondent No.4: S.C. FOR CENTRAL GOVERNMENT

Counsel for the Respondents No.5 to 10: G.P. FOR MEDICAL HEALTH AND FAMILY WELFARE

WRIT PETITION NO : 25082 of 2004

Between:

Dr.G.E.Reddy, s/o late Adinarayana Reddy,
r/o Flat No.207 Metro Classique Apartments, A.C.Guards, Hyderabad-500 004.

..... PETITIONER

AND

1 The Secretary, medical Council of India,
Allwan-e-Galib Marg, Kotla Road, New Delhi-110 002.
2 The Union of India, rep., by its Secretary, Ministry of Health, New Delhi.
3 The Registrar, A.P.State Medical Council, Sultan Bazar, Hyderabad-500 095.
4 The Director of Medical Education, A.P.Sultan Bazar, Hyderabad-500 095.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a writ, order or direction and more particularly one in the nature of writ of mandamus declaring the action of the 1st respondent in erasing the name of the petitioner/from the Medical Council Registrar for the period from 1-11-2004 to 31-7-2007 without furnishing a copy of the final order to the petitioner is illegal, without

jurisdiction, arbitrary, discriminatory and void; and consequently direct the respondents to restore the name of the petitioner in the A.P.State Medical Council Register and in the Indian Medical Register.

Counsel for the Petitioner: MR.J.SIDDAIAH

Counsel for the Respondents No.1 and 4: GP FOR MEDICAL HEALTH & FAMI.WELFARE

Counsel for the Respondent No.2: SC FOR CENTRAL GOVERNMENT

Counsel for the Respondents No.3: S.NIRANJAN REDDY

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WRIT PETITION NO : 25237 of 2004

Between:

1 Dr. S.S.Hari Prasad, S/o Seetapathy,
Flat No.105, Sriram Srinidhi Apartments Kukatpally, Hyderabad.
2 Dr.K.Suryakumari, W/o Dr. K.V.Narayana Rao,
403, Tirumala Residencey Vidyanagar, Hyderabad. 500 044.
3 Dr. G.Suvarna Kumari, W/o S.Feter,
Flat No.202, Plot No.16 P &T Colony, Hyderabad - 500 080.
4 Dr. M.Bhupathi Reddy, S/o Jayapal,
28-1-158 Chaderghat, Hyderabad.

..... PETITIONER(S)

AND

1 The Secretary, Medical Council of India,
Aiwan-e-Galib Marg, Kotla Road, New Delhi 110 002.
2 Union of India, Rep.by its Secretary Ministry of Health, New Delhi.
3 The Registrar, AP.State Medical Council Sultan Bazar, Hyderabad.
4 Director of Medical Education, AP.Sultan Bazar, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a writ , order or direction and more particularly one in the nature of Writ of Mandamus, declaring the action of the 1st respondent in erasing the names of the Petitioners from the Medical Council Register for the period from 1/11/2004 to 31/07/2007 without even serving a copy of the final order to the petitioners as illegal,

without jurisdiction, arbitrary, discriminatory, against the Principles of Natural Justice and void; and consequently direct the Respondent to restore the names of the Petitioner in the AP.State Medical Register and in the Indian Medical Register.

Counsel for the Petitioner: MR.J.SIDDAIAH

Counsel for the Respondents No.1&4: GP FOR MEDICAL HEALTH & FAMI.WELFARE

Counsel for the Respondents No.2: SC FOR CENTRAL GOVERNMENT

Counsel for the Respondents No.3: S.NIRANJAN REDDY

WRIT PETITION NO : 25240 of 2004

Between:

1 Dr. N. Hari, S/o Rajaiah,
1-7-578, Ramnagar, Hyderabad.
2 Dr. R.A. Ginde, S/o Mr. Ginde,
Khaja Banda Nawaz Institute of Medical Sciences, Gulbarga - 585 104.
3 Dr. S. Yella Rao, S/o Sanyasaiah,
R/o Hyderabad.
4 Dr. S. Shymala Kumari, W/o S. Yella Rao,
R/o Hyderabad.

..... PETITIONERS

AND

1 The Secretary, Medical Council of India,
Aiwan-e-Galib Marg, Kotla Road, New Delhi 110 002.
2 The Union of India, Rep. by its Secretary,
Ministry of Health, New Delhi.
3 The Registrar, A.P. State Medical Council,
Sultan Bazar, Hyderabad.
4 The Director of Medical Education, A.P. Sultan Bazar, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction and more particularly one in the nature of Writ of Mandamus declaring the action of the 1st Respondent in erasing the names of the Petitioners from the Medical Council Register for the period from, 1-11-2004 to 31-7-2007 without even serving a copy of final order to the Petitioners as illegal, without jurisdiction, arbitrary, discriminatory and void; and consequently direct the

Respondents to restore the names of the Petitioners in the A.P. State Medical Council Register and in the Indian Medical Register.

Counsel for the Petitioner: MR.J.SIDDAIAH

Counsel for the Respondents NO.1&2: GP FOR MEDICAL HEALTH & FAMI.WELFARE

Counsel for the Respondent NO.3: MR. S. NIRANJAN REDDY

Counsel for the Respondent NO.4: SC FOR CENTRAL GOVERNMENT

WRIT PETITION NO : 23646 of 2004

Between:

Dr.B.Anasuya W/o. Sri Sridhar
R/o.5-9-182, Chapel Road Hyderabad 500 001.

..... PETITIONER

AND

1 The Secretary Medical Council of India
Alwan-e-Galib Marg Kotla Road, New Delhi. 11- 002.
2 The Union of India, rep. by its Secretary, Ministry of Health, New Delhi.
3 The registrar, A.P.State Medical Council
Sultan Bazar, Hyderabad. 500 095.
4 The Director of Medical Education A.P. Sultan Bazar, Hyderazbad 500 095.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction and more particularly one in the nature of writ of Mandamus declaring the action of the 1st respondent in erasing the name of the Petitioner from the Medical Council Register for the period from 1-11-2004 to 31-7-2007 without furnishing a copy of the final order to the petitioner as illegal, without Jurisdiction, arbitrary, discriminatory and void and consequently direct the respondents to restore the name of the petitioner in the A.P.State Medical Council Register and in the Indian Medical Register in the interest of Justice.

Counsel for the Petitioner:MR.J.SIDDAIAH

Counsel for the Respondent No.1&4: GP FOR MEDICAL AND HEALTH

Counsel for the Respondent No.2: **SC for Central Government**

Counsel for the Respondent No.3: S.NIRANJAN REDDY

SC FOR MEDICAL COUNCIL

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WRIT PETITION NO : 21814 of 2004

Between:

Dr. D. Peraiah Chetty, s/o Venkata Swamy,
R/o Arundalpet, 2/3-4, Cross Road, Guntur, having permanent residence at Ravurpet, Vetapalem Post, Bapatla Taluq, Guntur District.

..... PETITIONER

AND

1 Medical Council of India, having its office at Aiwan-E-Galib Marg, Kotla Road, Opp: Mata Sundari College (for women),New Delhi - 110 002.
2 The Secretary, Medical Council of India, Aiwan-E-Galib Marg, Kotla Road, Opp: Mata Sundari College (for women),New Delhi - 110 002.
3 The Registrar, A.P. State Medical Council, Sultan Bazar, Hyderabad-500 095.
4 The Union of India, rep. by its Secretary,Ministry of Health, New Delhi.
5 The Director of Medical Education, Sultan Bazar, Koti, Hyderabad -500 095.
6 Katuri Medical College & Hospital, Chinakondrupadu, Guntur District, rep. by its Principal.
7 Dr. Pinnamaneni Siddhartha Institute of Medical Sciences, Chinnaoutupalli, Gannavaram, Krishna District, rep. by its Principal.
8 P.E.S. Institute of Medical Sciences, Kuppam, Chittloor District, rep. by its Principal.
9 Warangal Institute of Medical Sciences, Warangal , Warangal District, rep. by its Principal.
10 Chalmeda Anand Rao Institute of Medical Sciences, Karimnagar,Karimnagar District, rep. by its Principal.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to

issue an appropriate writ, order or direction more particularly in the nature of Writ of mandamus declaring the order No. 34(C)/2004-Med/19635, dated 1-11-2004 (Annexure-V) issued by the1st and 2nd respondents herein as illegal, ab-initio void, arbitrary and without jurisdiction and consequentially set aside the order No. 34 (C) /2004 -Med/19635, dated 1-11-2004 issued by the1st and 2nd respondents herein.

Counsel for the Petitioner: MR.CH.RAVINDRA BABU

Counsel for the Respondents No.1&2: Mr. S.NIRANJAN REDDY

Counsel for the Respondent No.3: MR. MOVVA CHANDRA SEKHAR RAO

Counsel for the Respondent NO.4: SC FOR CENTRAL GOVERNMENT

Counsel for the Respondents No.5 to 10: G.P. FOR MEDICAL HEALTH AND FAMILY WELFARE

WRIT PETITION NO : 2108 of 2005

Between:

Dr. Veera Venkatanagarajamannar Sarella, S/o S. Tatarao,
Rangaraya Medical College, Kakinada.

..... PETITIONER

AND

1. Medical Council of India having its office at Aiwan-E-Galib Marg,
Kotla Road, Opp: Mata Sundari College (for Women) New Delhi.
2. The Secretary, Medical Council of India, Aiwan-E-Galib Marg, Kotla Road,
Opp: Mata Sundari College (for Women) New Delhi.
3. The Registrar, A.P. State Medical Council, Sultan Bazar, Hyderabad.
4. The Union of India, Rep. by its Secretary, Ministry of Health, New Delhi.
5. The Principal Secretary to Government, Health Medical & Family Welfare
Department, Government of Andhra Pradesh, Hyderabad.
6. The Director of Medical Education, Sultan Bazar,Koti, Hyderabad.
7. The Registrar, NTR University of Health Sciences, Vijayawada.
8. The Principal, Rangaraya Medical, Kakinada.
9. NRI Institute of Medical Sciences, Guntur.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, especially one in the nature of writ of mandamus declaring the proceedings No. 34 (c)/2004-Med/19363
dt. 1-11-2004 passed by the 1st and 2nd Respondents as illegal, arbitrary, malafide

and opposed to principles of natural justice and consequently set aside the same as illegal.

Counsel for the Petitioner: MR.C.SAI REDDY

Counsel for the Respondents No.1,2 and 3: MR. S.NIRANJAN REDDY

Counsel for the Respondent No.4: SC FOR CENTRAL GOVERNMENT

Counsel for the Respondents No.5,6,8,9: G.P FOR MEDICAL & HEALTH

Counsel for the Respondent NO.7: Y.PADMAVATHI

WRIT PETITION NO : 234 of 2005

Between:

Dr. C. Indira, W/o. Dr. D.T. Naik,
R/o. K.2/1 Kundan Bagh, Begumpet, Hyderabad 500 016.

..... PETITIONER

AND

1 The Secretary, Medical Council of India,
Aiwan-E-Galib Marg, Kotla Road, New Delhi 110 002.
2 Union of India, Rep. by its Secretary, Ministry of Health,
New Delhi.
3 The Registrar, Andhra Pradesh Medical Council,
Sultan Bazar, Hyderabad 500 095.
4 The Director of Medical Education, Andhra Pradesh Sultan Bazar,
Hyderabad 500 095.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction and more particularly one in the nature of Writ of Mandamus declaring the action of the 1st Respondent in erasing the name of the Petitioner from the Medical Council Register for the period from 1-11-2004 to 31-7-2007 without furnishing a copy of the final order to the Petitioner as illegal, without jurisdiction, arbitrary, discriminatory and void; and consequently direct the Respondents to restore the name of the Petitioner in the A.P. State Medical Council Register and in the Indian Medical Register.

Counsel for the Petitioner: MR.J.SIDDAIAH

Counsel for the Respondents NO.1&2: GP FOR MEDICAL HEALTH & FAMI.WELFARE

Counsel for the Respondent NO.3: MR. S. NIRANJAN REDDY

Counsel for the Respondent NO.4: SC FOR CENTRAL GOVERNMENT

WRIT PETITION NO : 2109 of 2005

Between:

Dr K. Venkata Rao, S/o Simhachalam,
Rangaraya Medical College, Kakinada.

..... PETITIONER

AND

1. Medical Council of India having its office at Aiwan-E-Galib Marg, Kotla Road, Opp: Mata Sundari College (for Women) New Delhi.
2. The Secretary, Medical Council of India, Aiwan-E-Galib Marg, Kotla Road, Opp:Mata Sundari College (for Women) New Delhi.
3. The Registrar, A.P. State Medical Council, Sultan Bazar, Hyderabad.
4. The Union of India, Rep. by its Secretary, Ministry of Health, New Delhi.
5. The Principal Secretary to Government, Health Medical & Family Welfare Department, Government of Andhra Pradesh, Hyderabad.
6. The Director of Medical Education, Sultan Bazar, Koti, Hyderabad.
7. The Registrar,NTR University of Health Sciences, Vijayawada.
8. The Principal, Rangaraya Medical College, Kakinada.
9. NRI Institute of Medical Sciences, Guntur.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, especially one in the nature of writ of mandamus declaring the proceedings No. 34 (c)/2004-Med/19429, dt. 1-11-2004 passed by the 1st and 2nd Respondents as illegal, arbitrary, malafide and opposed to principles of natural justice and consequently set aside the same as illegal.

Counsel for the Petitioner: MR.C.SAI REDDY

Counsel for the Respondents No.1 &2: MR. S. NIRANJAN REDDY

Counsel for the Respondent No.3: SC FOR CENTRALGOVERNMENT

Counsel for the Respondents Nos. 4, 5 and 6: G.P FOR MEDICAL HEALTH & FAMILY WELFARE

Counsel for the Respondents No.7: Y. PADMAVATHI

WRIT PETITION NO : 2136 of 2005

Between:

Dr.Bhoopathy Sreehary, s/o B.Chnadraiah,
Kakatiya Medical College, Warangal.

..... PETITIONER

AND

1. Medical Council of India having its office at Aiwan-E-Galib Marg, Kotla Road, Opp:Mata Sundari College (for Women), New Delhi.
2. The Secretary, Medical Council of India, Aiwan-E-Galib Marg, Kotla Road, Opp.Mata Sundari College (For Women), New Delhi.
3. The Registrar, A.P.State Medical Council, Sultan Bazar, Hyderabad.
4. The Union of India, rep., by its Secretary, Ministry of Health, New Delhi.
5. The Principal Secretary to Government, Health Medical & Family Welfare Department, Government of A.P., Hyderabad.
6. The Director of Medical Education, Sultan Bazar, Koti, Hyderabad.
7. The Registrar, NTR University of Health Sciences, Vijayawada.
8. The Principal, Kakatiya Medical College, Warangal.
9. Maharaja Institute of Medical College, Vijayanagaram.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, especially one in the nature of writ of mandamus declaring the proceedings No.34(c)/2004-MED/19789 DT.3-11-2004 passed by the 1st and 2nd respondents as illegal, arbitrary, malafide and opposed to principles of natural justice and consequently set aside the same as illegal.

Counsel for the Petitioner: MR.C.SAI REDDY

Counsel for the Respondents NO.1 and 2: MR. S.NIRANJAN REDDY

Counsel for the Respondent No3: MR. MOVVA CHANDRA SEKHARA RAO

Counsel for the Respondent NO.4: SC FOR CENTRAL GOVERNMENT

Counsel for the Respondents No.5, 6,8 AND 9: GP FOR MEDICAL HEALTH

Counsel for the Respondent NO.7: Y.PADMAVATHI

WRIT PETITION NO : 3963 of 2005

Between:

1 Dr.K. Shivabhushanam S/o K. Chinna Subbarao,
R/o Hyderabad.
2 Dr. Y. Vijaya Saradhi, s/o Y. Ramalingeswara Sarma,
R/o Guntur.
3 Dr. N. Ramesh, S/o K. Narsaiah,
R/o Mysore.
4 Dr. K. Satyanarayana Reddy, S/o Nagi Reddy,
R/o Hyderabad.

..... PETITIONERS

AND

1 The Secretary, Medical Council of India, Aiwan-e-Galib Marg, Kotla Road, New Delhi.
2 Union of India, rep. by its Secretary, Ministry of Health, New Delhi.
3 Registrar, A.P. State Medical Council, Sultan Bazar, Hyderabad - 500 095.
4 Director of Medical Education, Sultan Bazar, Hyderabad - 500 095.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction and more particularly one in the nature of Writ of Mandamus declaring the action of the 1st Respondent in erasing the names of the Petitioners from the Medical Council Registers for the period from 1-11-2004 to 31-7-2007 without even furnishing a copy of the final order to the Petitioners as illegal, arbitrary, without jurisdiction, discriminatory, against the Principles of Natural Justice and void and consequently set aside the impugned List by directing the Respondents to restore the names of the Petitioners in the Indian Medical Register and State Medical Councils' Registers.

Counsel for the Petitioner: MR.J.SIDDAIAH

Counsel for the Respondents NO.1&2: GP FOR MEDICAL HEALTH & FAMI.WELFARE

Counsel for the Respondent NO.3: MR. S. NIRANJAN REDDY

Counsel for the Respondent NO.4: SC FOR CENTRAL GOVERNMENT

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WRIT PETITION NO : 1367 of 2005

Between:

1 Dr. A. Rama Mohan, S/o A.Nagabhushanam,
R/o Staff Quarters,N.R.I. Medical College, Chinnakakani, Guntur District.

2 Dr.V. Prem Swarup, S/o V. Jakaraiah,
R/o 29-10-41, Suryaraopet, Nakkal Road, Vijayawada, Krishna District.

..... PETITIONERS

AND

1 Medical Council of India, having its office at Aiwan - E - Galib Marg,
Kotla Road, Opp: Mata Sundari College (for women), New Delhi.
2 The Secretary, Medical Council of India, Aiwan - E - Galib Marg,
Kotla Road, Opp: Mata Sundari College (for women), New Delhi.
3 The Registrar, A.P. State Medical Council, Sultan Bazar, Hyderabad.
4 The Union of India, Rep. by its Secretary, Ministry of Health, New Delhi.
5 The Director of Medical Education, Sultan Bazar, Koti, Hyderabad.
6 N.R.I. Medical College, Chinnakakani, Guntur District.
7 Pinnamaneni Siddhartha Institute of Medical Sciences, Gannavaram,
Vijayawada.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, especially one in the nature of Writ of Mandamus declaring the proceedings Proc.No. 34(C) /2004-Med/19413 and Proc.No. 34(C)/2004-Med/19379, dt. 1-11-2004 passed by the 1st and 2nd Respondents as illegal, intentional, malafide, arbitrary, opposed to principles of natural justice and consequently set-aside the same as illegal.

Counsel for the Petitioner: MR.K.V.BHANU PRASAD

Counsel for the Respondent Nos.1 and 2: Mr. S.Niranjan Reddy

Counsel for the Respondent No.3: MR.MOVVA.CHANDRASHEKAR RAO

Counsel for the Respondent No.4: SC FOR CENTRAL GOVERNMENT

Counsel for the Respondent Nos.5 to 7: GP FOR MEDICAL HEALTH & FAMI.WELFARE

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WRIT PETITION NO : 2154 of 2005

Between:

Dr.Singuluru Surya Rao, s/o S.Mohan Rao,
r/o 9-4-1/A, Vittal Nagar, Devanagar Railway Gate, Kurnool-518 002.

..... PETITIONER

AND

1 Medical Council of India, having its office at Aiwan-E- Galib Marg,
Kotla Road, Opp.Mata Sundari College (for Women), New Delhi.
2 The Secretary, Medical Council of India, Aiwan-E-Galib Marg, Kotla Road,
Opp.Mata Sundari College (for Women), New Delhi.
3 The Registrar, A.P.State Medical Council, Sultan Bazar, Hyderabad.
4 The Union of India, rep., by its Secretary, Ministry of Health, New Delhi.
5 The Director of Medical Education, Sultan Bazar, Koti, Hyderabad.
6 Navodaya Medical College, Raichur.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, especially one in the nature of writ of mandamus declaring the proceedings Proc.No.34(C)/2004-Med/19401 dt.1-11-2004 passed by the 1st and 2nd respondents as illegal, intentional, malafide, arbitrary, opposed to principles of natural justice and consequently set aside the same as illegal.

Counsel for the Petitioner: MR.K.V.BHANU PRASAD

Counsel for the Respondents No.1&2: S.NIRANJAN REDDY

Counsel for the Respondents No.3: M.CHANDRA SEKHARA RAO

Counsel for the Respondents No.4: SC FOR CENTRAL GOVERNMENT

Counsel for the Respondents No.5: G.P. FOR MEDICAL AND HEALTH

Counsel for the Respondents No.6:

WRIT PETITION NO : 2724 of 2005

Between:

Dr. T. Bhaskar Rao S/o.T. Lakshmana Suri
R/o. 74-23/51, Karepaku Thota, Venkatappaya Veedhi,
Ashok Nagar, Vijayawada.

..... PETITIONER

AND

1 The Government of India, Ministry of Health and Family Welfare, Department of Health, Nirman Bhavan, New Delhi, Rep. by its Secretary.
2 The Medical Council of India, Rep. by its Secretary, Aiwan-e-Galib Marg, Kotla Road, New Delhi, Rep. by its Secretary.
3 Andhra Pradesh Medical Council, Koti, Hyderabad. Rep. by its Registrar.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more in the nature of a writ of Mandamus by declaring the action of the 2nd Respondent in issuing the impugned proceedings in Ref. No. 34(C)/2004/MED/19339, dt. 1-11-2004 as arbitrary, illegal and without jurisdiction and consequentially set aside the Proceedings of 2nd Respondent No.34(C)/2004/MED/19339, dt. 1-11-2004.

Counsel for the Petitioner: MR.K.G.K.PRASAD

Counsel for the Respondent Nos. 1 and 2: A.RAJASEKHARA REDDY

SC FOR CENTRAL GOVERNMENT

Counsel for the Respondent No.3: MR.MOVVA.CHANDRASHEKAR RAO

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WRIT PETITION NO: 2726 of 2005

Between:

Dr. K. Karuna Murhty S/o. Sri Venkata Narayana,
R/o. 67-17-4/c, Naga Milli Thota, Kakinada, East Godavari District.

..... PETITIONER

AND

1 The Government of India, Ministry of Health And Family Welfare, Department of Health, Nirman Bhavan, New Delhi, Rep. by its Secretary.
2 The Medical Council of India, Rep. by its Secretary, Alwan-e-Galib Marg, Kotla Road, New Delhi, Rep. by its Secretary,
3 Andhra Pradesh Medical Council, Koti, Hyderabad. Rep. by its Registrar.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more in the nature of a writ of Mandamus by declaring

the action of the 2nd Respondent in issuing the impugned proceedings in Ref. No.34(C)/2004/MED/19656 dt. 1-11-2004 as arbitrary, illegal and without jurisdiction and consequentially set aside the Proceedings of 2nd Respondent No. 34 (C)/2004/MED/19656, dt 1-11-2004.

Counsel for the Petitioner: MR.K.G.K.PRASAD

Counsel for the Respondents No.1&2: SC FOR CENTRAL GOVERNMENT

Counsel for the Respondents No.3: S.NIRANJAN REDDY

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WRIT PETITION NO : 3229 of 2005

Between:

Dr. K. Hari Krishna, S/o Sri K. Appa Rao,
R/o Sriramavram (V), Via Dendulur, West Godavari District, Pin - 534 427.

..... PETITIONER

AND

1 The Government of India, Ministry of Health and Family Welfare, Department of Health, Nirman Bhavan, New Delhi, Rep. by its Secretary.
2 The Medical Council of India, rep. by its Secretary, Alwan-e-Galib Marg, Kotla Road,New Delhi, Rep. by its Secretary.
3 A.P. Medical Council, Kotla, Hyderabad, Rep. by its Registrar.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more in the nature of a Writ of mandamus by declaring the action of the 2nd Respondent in issuing the impugned proceedings in Ref.No. 34 (C)/2004/MED/19683, Dt. 1-11-2004 as arbitrary, illegal and without jurisdiction and consequentially set aside the proceedings of 2nd Respondent No. 34 (c) /2004/MED/19683, dt. 1-11-2004.

Counsel for the Petitioner: MR.K.G.K.PRASAD

Counsel for the Respondents No.1&2: SC FOR CENTRAL GOVERNMENT

Counsel for the Respondents No.3: S.NIRANJAN REDDY

The Court made the following:

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE GHULAM MOHAMMED

WRIT APPEAL NO.2107 OF 2004,

W.P.Nos.25082, 25237, 25240 OF 2004, 2108,

234, 2109, 2136, 3963, 23646, 1367, 2154, 2724, 2726

AND 3229 0F 2005

JUDGMENT

(Per Sri Justice J.Chelameswar)

Writ Appeal No.2107 of 2004 is preferred by the petitioner in W.P.No.21814 of 2004 aggrieved by an order dated 06.12.2004 by which the learned Judge dismissed WPMP No.28606 of 2004 declining to grant interim stay of all further proceedings in pursuance the order No.34[C]/2004-Med/19635, dated 01.11.2004 issued by the 1st and 2nd respondents herein (ie) Medical Council of India (for short 'MCI') and The Secretary, Medical Council of India.

The petitioners in various other writ petitions are also similarly situated as the appellant in the above-mentioned writ appeal who had suffered similar orders as the one mentioned above at the hands of the Medical Council of India and the Secretary of Medical Council of India (respondents in all the above-mentioned writ petitions).

All the above writ petitions came to be tagged on to the above-mentioned writ appeal by virtue of various orders passed by the learned Judges hearing the writ petitions. One of them being docket order dated 31.03.2005 in W.P.No.25237 of 2004.

On 31.03.2005 when the appeal was being heard, having regard to the elaborate submissions made on either side this Court enquired the learned counsel appearing on either side whether anything further would survive for adjudication in the writ petition, if all the submissions made by the learned counsel were to be considered and the issue is decided. Both the learned counsel appearing for the appellant as well as the respondents agreed for a final disposal of the writ petition. However, we were informed that some more writ petitions of the same nature are already directed to be tagged on to these writ petitions by the orders of the learned Judges of this Court, of which one is already indicated above. We, therefore, directed that the matters be listed on the next day to enable the learned counsel appearing in the other writ petitions to address the Court. Accordingly, some of the learned counsel appearing in all these writ petitions addressed the arguments and some of the learned counsel simply adopted the submissions made by the learned counsel appearing in the writ appeal Mr.Ramesh Ranganadhan. All the learned counsel agreed that above writ petitions could be disposed of finally.

The nature of the controversy is almost identical in all the cases with certain minor factual variations. The case of the appellant in W.A.No.2107 of 2004 may be taken as a representative case insofar as the nature of the litigation is concerned. The appellant was served initially with a notice dated 27.09.2003 from the 1st respondent Medical Council of India (for short 'the MCI') which was signed by its Secretary, who was the 2nd respondent in the above writ appeal. The said communication dated 27.09.2003 reads as follows:

" I am directed to state that an inspection of the following medical institutes was carried out by Medical Council of India. At the time of inspection, the college authorities had submitted a set of declaration forms regarding employment of teachers. These sets of declaration forms also contained a declaration form duly signed by you declaring that you are working in these institutes. Copy of all declaration forms signed by you are enclosed herewith.

Name of the College	DOJ	Date of Inspection
P.E.S.Instt. of Medical Sciences, Kuppam	02.01.2003	26-27 May 2003
Katuri Medical College, Guntur	15.04.2002	15-16 July 2003
Chalmeda Anand Rao Instt. of Medical Sciences, Karimnagar	03.03.2003	23-24 June 2003
Dr.Pinnamaneni Siddhartha Instt. of Medical Sciences, Chinnoutpalli.	01.10.2002	26 Dec 2002
Warangal Instt. of Medical Sciences, Warangal	12.12.2002	13-14 June 2003

In the meeting of the Executive Committee of the Council on 30.6.2003, certain more declaration forms by certain other medical professionals were detected wherein a medical professional has claimed employment at more than one medical college at the same point of time. This is nothing but misleading the Council in discharging of its statutory duties and it would also be illegal and in violation of law. This deserves to be dealt with strictly.

In this serious issue the Council has decided to take appropriate immediate steps and action in accordance with law. Before any proceedings are initiated, you are requested to furnish your comments on the above within a period of 15 days from the date of issue of this communication failing which the Council shall proceed to take appropriate action."

In substance it is a show cause notice calling upon the appellant to submit his comments within a period of 15 days. The substance of the show cause notice is that the MCI proposes to initiate appropriate action against the appellant for the reasons indicated in the communication extracted above. The appellant submitted his explanation dated 14.10.2003. The relevant portion of the explanation reads as follows:

" I received your letter dated 27-9-2003 and able to understand the things that happened during the year 2002 and 2003 MCI Inspection. I beg to bring the following few facts for your kind information.

I may please be excused for the things that happened and I am unable to understand clearly the rules and regulations of MCI.

As I retired from the Government Service as professor of a pediatrics on 31st July, 2001. I was in process of searching for a job as a professor (Medical Teacher). As I am very much interested in teaching and treating pediatric patients. I came to know about the vacancies in the various Private Medical Colleges and Hospitals. I went and requested for the post of

professor of pediatrics. The appointing authority consisting Principals, Superintendents and Directors of the Medical Colleges concerned obliged and asked me to join to do service as a teacher and as a pediatrician to work in the concerned Colleges & Hospitals. They have not given any appointment orders. I joined and came to know that no staff member of the faculty (Medical Teachers) were given any appointment orders.

I was thinking that I can continue in the job and teaching students in college and attending Pediatric Patients in hospital. But suddenly the private Medical College authorities called me on the days I mentioned, without any prior intimation or information. I was asked to quit the job and saying that your services are not required for the present and you will be called if necessary. And you are removed from the job, asked me to leave the job.

Like that I joined in various colleges and was removed in all most all the colleges I joined, that are mentioned by you. They (Private Medical College authorities) have not given any appointment orders or any relieving orders or orders of removal from service. I came to know latter that the Private Medical College Managements were utilizing the services of the Medical Teachers or State for MCI Inspection and not intimating anything before hand about the rules and regulations and other particulars of the job.

I request you sir in the circumstances explained I may please be excused and I hereafter not going to join in any Private Medical Colleges and Hospital and I don't like to be involved in the game of the Private Medical College Management authorities

	Name of the College	Joined on	Date of MCI Inspection	Removed from service stating that my services are not required
1.	Katuri Medical College, Chinakondrupadu, Guntur Dist. Again requested me to join in the same Institute	1-4-2002 1-7-2003	-- 15, 16 July, 2003	15-10-2002 31-7-2003
2.	Dr.Pinnamaneni Siddhartha Instt. of Medical Sciences, Chinnoutpalli, Gannavaram, Krishna Dist.	1-11-2002	26, Dec., 2002	31-12-2002
3.	Warangal Inst. of Medical Sciences, Warangal	1-6-2003	13, 14 June, 2003	15-6-2003
4.	Chalmeda Anand Rao Instt. of Medical Sciences, Karimnagar.	20-6-2003	23, 24 June, 2003	30-6-2003
5.	P.E.S. Instt. of Medical Sciences, Kuppam And again requested me join on	2-1-2003 1-5-2003	-- 26, 27 May, 2003	28-2-2003 31-5-2003

The Private Medical College authorities including Principals, Superintendents of various colleges requested me to write on the declaration form about my qualifications and experience and asked me to sign and said that the other things will be filled up by them and taken care of. As I was working in their institution I signed believing the Principals, Superintendents and Management authorities.

Once again I request you sir kindly pardon and excuse me for the commitments I made and I will be very much grateful for the same."

Thereafter the MCI by communication dated 07.01.2004 informed the appellant that he would be given a personal hearing and called upon him to avail the same. It appears that the appellant availed the opportunity and appeared before the MCI and made a signed statement (the content of which would be referred to later in this Judgment). Finally by an order dated 01.11.2004 the appellant was informed by the Secretary of the MCI that the 'General Body' of the MCI held a meeting on 12.10.2004 and decided as hereunder:

> *"(a) Your name shall be erased from the Indian Medical Register temporarily from 1st November, 2004 upto 31st July, 2007*
>
> *(b) You will not be eligible to be considered as a teacher at any medical college for the academic years 2005-06 and 2006-07.*

Challenging the said communication, the appellant filed the above-mentioned W.P.No.21814 of 2004.

The petitioners in all the other writ petitions were also recipients of similar communication by which their names were sought to be erased from the Indian Medical Register for the same period as mentioned above. It appears that initially there was an interim order in various writ petitions for some time upto 31.03.2005. In W.A.No.2107 of 2004 the learned Judge who heard the miscellaneous petition in which the order under appeal came to be passed, dismissed the miscellaneous petitions, whereas in other writ petitions the learned Judges declined to pass any order of extension, but directed that all the writ petitions be clubbed to the above-mentioned writ appeal.

As can be seen from the show cause notice dated 27.09.2003 which was issued to the appellant, the substance of the allegation against the appellant is that he made a

declaration that he was employed with five medical colleges situated in various parts of the State of Andhra Pradesh at the same point of time and according to MCI such a conduct would be “nothing but misleading the Council in discharging of its statutory duties and it would also be illegal and in violation of law”. As already mentioned earlier on receipt of the explanation and a personal hearing to the appellant, the Medical Council came to a final conclusion that such conduct of the Doctors was considered to be a misconduct and therefore passed final orders directing eraser of the names of each one of the writ petitioners from the Indian Medical Register for a specified period.

Article 19(1)(g) of the Constitution of India guarantees to all the citizens of India a fundamental right to practise any profession. Sub-Article (6) authorizes the State to make any law imposing in the interest of general public, reasonable restrictions on the exercise of the above-mentioned right. It specifically recognizes the authority of the State to make a law dealing with the professional or technical qualifications necessary for practicing any profession.

Article 246(2) empowers the Parliament as well as the State Legislatures to make laws relating to legal and medical professions apart from other professions.

Prior to the commencement of the Constitution, there was a law known as the Indian Medical Council Act, 1933, which dealt with various aspects of the regulation of the medical profession and which came to be repealed by Act 102 of 1956 (for short ‘Act 102 of 1956’) of Parliament called the Indian Medical Council Act, 1956. The broad scheme of the Act is that the Central Government is authorized to constitute a Council, which by a statutory definition is called as the Medical Council of India. The composition of which is indicated in Section-3 of the Act. Some of the members are to be nominated by the various Governments mentioned under Clause-(a) and others are to be elected from the various electoral colleges consisting of the Universities established by law and having a medical faculty and the registered medical practitioners of each State etc.

Section-6 declares the MCI shall be a body corporate with a perpetual succession and a common seal, etc. Section-7 deals with the various offices of the said body corporate. Section-8 stipulates that the MCI shall meet at least once in each year. It also stipulates a quorum for the meeting. Section-9 deals with Officers, Committees and Servants of the Council. Section-10 deals with the Executive Committee of the Council and its composition.

Section-11 stipulates that the medical qualifications granted by Universities or medical institutions in India, which are included in the First Schedule to the Act, shall be recognized medical qualifications for the purposes of the Act. Sub-Section (2) prescribes the procedure as to how a qualification granted by any University or Institution could be added to the First Schedule of the Act. Section-12 deals with the recognition of medical qualifications granted by medical institutions outside India enumerated in Schedule-II and various allied matters thereto.

Section-15 confers a right of enrolment on any State Medical Register by persons holding the medical qualifications included in the Schedules-I and II of the Act.

Sub-Section (2) further stipulates that persons other than whose names are enrolled in State Medical Register are not entitled for any employment either as a physician or surgeon either in the Government or any Institution maintained by a local or other authority. It also debars those who are not enrolled on a State Medical Register from practicing medicine in any State etc.

Essentially Section 15 is the Section, which seeks to regulate the fundamental right guaranteed under Article 19(1)(g) of the Constitution in exercise of the power conferred under Article 19(6).

Section-21 contemplates the maintenance in the prescribed manner of a register of the medical practitioners. The said register is called as Indian Medical Register, which should contain the names of all persons who are for the time being enrolled on any State Medical Register. The said register is a public document by a declaration made under Section 21(3).

Section-23 deals with the procedure of making new entries into the above-mentioned medical register.

Section-24 deals with the method and manner of removal of the name from the Indian Medical Register, which is required to be noticed in detail, but at a later stage in this judgment.

Section-33 empowers the Council to make regulations to carry out the various purposes contemplated by the Act. It is specified in the opening clause in the section that the power is general in nature, but as a matter of illustration some of the areas where the regulations could be made are also indicated in various substances of the section. Sub-

section (m) reads as 'the standards of professional conduct and etiquette and code of ethics to be observed by medical practitioners'.

It is also worthwhile mentioning notwithstanding the conferment of the power under Section-33 on the Medical Council to make regulations providing for the standards of professional conduct and etiquette etc., the Parliament thought it fit to insert Section 20A w.e.f. 16.06.1964 whereby the Council is once again expressly authorised to 'prescribe standards of professional conduct and etiquette and a code of ethics for medical practitioners'. The only difference between Section 33(m) and 20A appears to be that while the power under Section 33(m) is required to be exercised with the previous sanction of the Central Government, under Section 20A not such requirement is insisted upon.

In the year 1993 by an Act of the Parliament, Section 10A to C were introduced by which it is stipulated that no new medical college could be established or no existing medical college could open a new or a higher course of study of training etc except with the previous permission of the Central Government. The Central Government is obliged to consult the Indian Medical Council before according permission.

The Medical Council is required to give its recommendations either for the establishment of a new medical college or introduction of a new course in a medical college. The MCI is required to consider various factors indicated in sub-section (7) of Section-10A while giving its recommendations. The various factors indicated under sub-section (7) are as follows:

> "(a) whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Council under section 19A or, as the case may be, under section 20 in the case of postgraduate medical education;
>
> (b) whether the person seeking to establish a medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources;
>
> [c] whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the medical college or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;

(d) whether adequate hospital facilities, having regard to the number of students likely to attend such medical college or course of study or training or as a result of the increased admission capacity, have been provided or would be provided within the time-limit specified in the scheme;

(e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such medical college or course of study or training by persons having the recognized medical qualifications;

(f) the requirement of manpower in the field of practice of medicine; and

(g) any other factors as may be prescribed.

It can be seen from the above that under Sub-section-(7C) one of the factors which is required to be considered by the Medical Council in recommending or rejecting the case of a new medical college or opening up of a new course in a existing college is that whether there are necessary facilities in respect of ***staff***, equipment etc.

The recommendation of the Medical Council is of great relevance in the matter of according permission for establishment of a new medical college or creation of new course in the medical college, as the Medical Council is an expert body consisting of eminent people either nominated or elected in the field of medicine or connected with medicine.

The question whether a proposed medical college has the necessary and adequate members of the teaching staff who are qualified to teach is certainly a matter, which could be property assessed only by an expert body by Medical Council.

We must also notice at this stage there is another enactment called the Andhra Pradesh Medical Practitioners Registration Act, 1986.

Under Section 3 of the said Act, it also contemplates establishment of a Council called Andhra Pradesh Medical Council, which is a body corporate, the composition of the Council is that it consists of some nominated members and some elected members, the details of which are not necessary for the present.

Section-11 contemplates the existence of an Executive Committee and its composition.

Section-12 contemplates the creation of Special Committees and their functions;

Section-13 deals with the Officers of the Council;

Section-14 of the State Act contemplates the maintenance of a Register of the Medical Practitioners containing the names of the medical practitioners, arranged in the alphabetical order and published it in the A.P. Gazette, which is required to be maintained by the Registrar of the Council, who is obliged to revise the same periodically in the prescribed manner.

Section-15 of the Act contemplates an application by any person who holds any of the medical qualifications included in the Schedules to the Indian Medical Council Act, 1956. It further stipulates that the Registrar of the State Medical Council if satisfied that the applicant is entitled for registration having regard to the relevant provisions of the Act, to enter the name of the applicant in the Register referred to earlier (State Register).

Sub-Section-(4) of Section-15 authorises the State Council to refuse registration of any person in two contingencies – one is that the applicant was convicted of an offence involving moral turpitude and sentenced to imprisonment for a period of not less than six months or with fine of not less than rupees five hundred and further that a period of five years had not elapsed from the date of such conviction till the date of application; and secondly, that the applicant was found guilty by the Council of 'infamous conduct in any professional respect'. We must indicate here that the Act nowhere defined what is 'infamous conduct in any professional respect.

Section-31 of the Act empowers the Government by a notification to make rules for carrying out all or any of the purposes of this Act.

It is the consensus of all the counsel appearing in this batch of writ petitions that no rules have been framed by the State Government so far in exercise of its powers under Section 31 either describing what is meant by 'infamous conduct in any professional respect' or any matter incidental thereto.

It must be mentioned here that the Medical Council of India made a set of rules called 'Professional Conduct, Etiquette and Ethics Regulations, 2002. Such Regulations were published in the Gazette of India, Part-III – Sec-4 dated 6th April, 2002. These Regulations deal with various duties and obligations of the Physicians. For the purpose of these Regulations, a Physician is described to be a Doctor with qualification of MBBs or MBBs

with post graduate degree/diploma or with the equivalent qualification in any medical discipline under Chapter-1B- 1.1.

Chapter-6 of the Regulations deals with unethical acts.

Chapter-7 of the Regulations deals with misconduct. Para-7 'misconduct' – the following acts of commission or omission on the part of a physician shall constitute professional misconduct rendering him/her liable for disciplinary action.

Chapter-8 of the Regulations deals with punishment and disciplinary action. Para 8.2 of the Regulations insofar as it is relevant for us reads as follows:

> "…… If the medical practitioner is found to be guilty of committing professional misconduct, the appropriate Medical Council may award such punishment as deemed necessary or may direct the removal altogether or for a specified period, from the register of the name of the delinquent registered practitioner. Deletion from the Register shall be widely publicized in local press as well as in the publications of different Medical Associations/Societies/Bodies."

It can be seen from the above extracted portion that the measure of punishment with reference to a medical practitioner who is found to be guilty of professional misconduct, is not detailed except stating 'such punishment as deemed necessary' or the removal altogether or for a specified period from the register". It follows from that under the regulation there are three categories of punishments contemplated. The removal altogether from the register is one category of punishment and the removal for a specified period is a second category. Apart from that regulation, it also recognizes that punishments as deemed necessary.

Neither the Act nor the Regulation is express about the nature of the punishment under the third category. The Regulation is also not clear as to what is the competent body to record the finding of the guilt in the context of Professional misconduct by the medical practitioner. In this context para 8.2 of the above-mentioned Regulations is also necessary.

> "8.2 It is made clear that any complaint with regard to professional misconduct can be brought before the appropriate Medical Council for Disciplinary action. Upon receipt of any complaint of professional misconduct, the appropriate Medical Council would hold an enquiry and give opportunity to the registered medical practitioner to be heard in person or by pleader……."

It speaks of a complaint to the appropriate Medical Council. The expression "appropriate Medical Council" is not defined anywhere. The question therefore would be - what is the appropriate Medical Council in the context of an enquiry into the professional misconduct of the medical practitioners.

In our view it depends on the nature of the misconduct, having regard to the fact that there are two enactments dealing with professional conduct of the medical practitioners, one of the Parliament and the other of the State of Andhra Pradesh. We must also remember in the context of the present batch of cases neither the local act or any subordinate legislation there under define 'Professional misconduct' (described under Section 15(4) of the State Act as 'infamous conduct in any professional respect'.

It is a further question where the expression 'misconduct' contemplated under the Central Act under the Regulations and the expression 'infamous conduct' are of coterminous import. We must make it clear that this aspect was not argued. We can only take into account that it is open for the Government of Andhra Pradesh acting under Section 31 of the State Act to make rules providing for a definition of 'infamous conduct' contemplated under Section 15(4) and also a procedure for dealing with medical professionals who are alleged to be guilty of 'infamous conduct'. Though the State did not choose to define the expression 'infamous conduct' either in the statute or under any subordinate legislation made there under. The State of Andhra Pradesh made rules providing for the procedure to be followed at an enquiry held either under Section 15 or 17 of the Act wherever the medical practitioner is accused of infamous conduct.

It is in the context of this legal background, the questions that arise in this batch of cases are required to be considered. The impugned action in each one of these writ petitions is challenged on the following various grounds.

1. that the decision of the Medical Council of India is without jurisdiction;

2. assuming that the Medical Council of India has the necessary jurisdiction to pass such an order as one impugned in this writ petitions, the punishment imposed on each of the writ petitioners is disproportionate to the misconduct alleged;

3. that the alleged conduct of each of the petitioners is not professional misconduct either as deprived under the regulations framed in the Central Act or

'infamous conduct in any professional aspect' as contemplated under the State Act on the part of any one of the writ petitioners herein;

In our view, each of these questions require a very critical examination for the reason that what is at stake for each of the petitioners is nothing but a fundamental right guaranteed by the Constitution to practice a profession. To deprive any professional such as the petitioners herein, of their fundamental rights to practice there must necessarily be a clear authority of law and such deprivation could be done only in accordance with the procedure established by law. Such law must be a reasonable law making it a reasonable restriction within the meaning of Article 19 (6) of the Constitution of India.

The learned counsel, Sri Ramesh Ranganadhan, submitted that neither the show cause notice dated 27-09-2003 nor the final order dated 01-11-2004 clearly indicates as to what exactly is the misconduct alleged to have been committed by the petitioners, and therefore, the petitioners were deprived of their right to make an effective defence against the allegation. He also argued that the Medical Council of India is not authorized under either of the two enactments referred to earlier to deal directly with the cases of either 'professional misconduct' or 'infamous conduct'. On the other hand, as can be seen from the scheme of the Central Act, the Medical Council of India can only prescribe the standards of Professional Conduct, Etiquette and code of Ethics for medical practitioners. Section 2 (A) does not authorize the Medical Council of India to enforce the standards set up by it and such power is only entrusted to the various Local/State Medical Councils.

The learned counsel laid great emphasis on the language and scheme of Section 24 of the Central Act, which reads as follows:

"**24. Removal of names from the Indian Medical Register:-** If the name of any person enrolled on a State Medical Register is removed therefrom in pursuance of any power conferred by or under any law relating to registration of medical practitioners for the time being in force in any State, the Council shall direct the removal of the name of such person from the Indian Medical Register.

(2) Where the name of any person has been removed from a State Medical Register [on the ground of professional misconduct or any other ground except that he is not possessed of the requisite medical qualifications] or where any application made by the said person for restoration of his name to the State Medical Register has been rejected, he may appeal in the prescribed manner and subject to such conditions

> including conditions as to the payment of a fee as may be laid down in rules made by the Central Government in this behalf, to the Central government, whose decision, which shall be given after consulting the Council, shall be binding on the State Government and on the authorities concerned with the preparation of the State Medical Register."

He further argued that having regard to the language of Section 24 of the Central Act, it is only when the concerned State Medical Council removes the name of any medical practitioner from the State Medical Council Register, the Medical Council of India can take a consequential step to remove the name of such a medical practitioner from the Indian Medical Register. The language of Section 24 is clear that once a State Medical Council takes a decision to remove the name of any one of the medical practitioner obtaining in its Register, the Medical Council of India is bound to consequentially delete the name from the Register maintained by it as a necessary legal consequence. But, no such power is conferred on the Medical Council of India independently.

On the other hand, it is submitted by the learned counsel,
Sri S.Niranjan Reddy, appearing for the respondents that Section 24 of the Central Act does not contain any power to deal with the cases of professional misconduct by a medical practitioner, but only contains an obligation on the part of the Medical Council of India to take certain course of action whenever the concerned State Medical Council takes a decision to remove the name of any one of the medical practitioners from the State Medical Council's Register. He further submitted that the power to prescribe the standards of professional conduct, etiquette and code of ethics conferred on the Medical Council of India under Section 33 of the Central Act, take within its sweep all the necessary and ancillary powers to prescribe the appropriate punishment for the professional misconduct, breach of etiquette and code of ethics and also enables the Medical Council by regulations to provide for a procedure for a factual ascertainment whether a medical professional is guilty of misconduct or etiquette or code of ethics and also impose the appropriate penalty. The learned counsel further submitted that it is only in exercise of such power under Section 33 of the Central Act, the Medical Council of India made the Regulations of 2002 referred to earlier. The regulations define various categories of professional misconduct prescribes the norms of etiquette and code of ethics that are required to be observed by the medical practitioners. Para-7 occurring in chapter-7 the Regulation stipulates that various acts enumerated in the said chapter the commission or omission on the part of a physician constitute professional misconduct rendering the medical practitioner liable for disciplinary

action. Under para-7.1, the commission of violation of any one of the regulations is a misconduct. Apart from that, various other kinds of misconduct are enumerated under various sub-paragraphs of Chapter-7.

In chapter-8 under sub-paragraph 8.1, it is further stated that the instances of professional misconduct enumerated under chapter-7 are 'not intended to constitute a complete list of the infamous acts', which attract disciplinary action. It is further stated that either the Medical Council of India or the State Medical Council are "in no way precluded from considering and dealing with any other form of professional misconduct on the part of the registered medical practitioner". Paragraph 8.1 of the Regulations, 2002 reads as follows:

> "8.1 It must be clearly understood that the instances of offences and of Professional misconduct which are given above do not constitute and are not intended to constitute a complete Medical council of India and or State Medical Councils are in no way precluded from considering and dealing with any other form of professional misconduct on the part of a registered practitioner, Circumstances may and do arise from time to time in relation to which there may occur questions of professional misconduct which do not come within any of these categories. Every care should be taken that the code is not violated in letter or spirit. In such instances as in all others, the Medical Council of India and/or State Medical Councils have to consider and decide upon the facts brought before the Medical Council of India and/or State Medical Councils."

The learned counsel therefore argued that it is open for the Medical Council from case to case to decide whether a particular act or omission on the part of the medical professional is a misconduct attracting disciplinary action or not. The learned counsel further argued that paragraphs 8.1. and 8.2 under Chapter-8 recognize the fact that there is more than one Medical Council in exist once, one created under the local act and another created under the Central Act of 1956. He also made a very categoric statement that in some of the States in the country, there are no enactment such as the Andhra Pradesh Medical Practitioners Registration Act, 1986. Therefore, if the submission of the learned counsel for the petitioners is accepted, in those States where there is no local act in force, the professional conduct of the medical practitioners can never be regulated. He further argued that in view of the language of Section 21 of the Central Act, those of the medical practitioners whose names are not enrolled in any State Medical Register (defined expression in Section 24 of the Central Act) can or ever be brought on the Register

maintained by the Central Government, thereby, denying such medical practitioners, the privilege conferred under Section 27 of the Indian Medical Council Act, 1956.

In substance, the learned counsel submitted that in all those States, where there is no local law dealing with the registration of medical practitioners (if the submission of the learned counsel for the petitioners is accepted), the medical practitioners would not only be deprived of their privilege conferred under Section 27 of the Central Act to practice in any part of India but also become bunch of unregulated professionals whose conduct can never be regulated by the Union of India so long as the concerned State Legislature decides not to make law or statute.

We have already noticed that the legislative field of medical profession is a concurrent subject occurring in List-3 of Schedule-VII of the Constitution of India. By virtue of Article 246 (2) of the Constitution of India, both the State legislatures and the Parliament have the necessary legislative competence to make laws subject to certain other constitutional limits. The law made by the Parliament in exercise of the power under Article 246 (2) of the Constitution of India with reference to any one of the entries obtaining in List-3 of the Seventh Schedule would normally be applicable to the whole directory of India, unless the Parliament otherwise restricts the operation of such law. At the same time, the legislatures of each one of the States in India would still be competent to make a law with reference to the same subject on which a parliamentary law exist. However, there can be a situation where the law made by the Parliament and the law made by one of the State legislatures with reference to one of the specific topics in the concurrent list may conflict each other. In the sense that they create obligations, which are mutually contradictory that a citizen bound by both the laws cannot but disobey one law in order to comply with the other law. Contemplating the possibility of such legislations, the Constitution makers in their wisdom drawn from the constitutional history and the working of the American Constitution and the British American Act (Canadian Constitution) provided under Article 254 of the Constitution of India that wherever a conflict such as the one described above, the law made by the Parliament would prevail over the law made by the State legislature with certain exceptions enumerated under Article 254 of the Constitution of India itself, with which we are not concerned at present.

So long as there is no conflict between two such laws described above, both the laws would operate in their respective sphere, which they seek to govern with respect to the

same subject matter indicated in the concurrent list. Examined from this point of view, the law made by the State of Andhra Pradesh necessarily has the limited territorial operation extending over those territories to which the legislative power of the State of Andhra Pradesh extends. Apart from that, the State law does not expressly create any privileges on the registered medical practitioners on the lines of the privileges created under Section 27 of the Central Act. May be such privilege, in our view, is a fundamental right under Article 19 (G) of the Constitution of India of every person who is qualified in accordance with the laws dealing with the qualification of a medical practitioner. If a person is qualified to practice medical profession in accordance with any one of the laws made by a State Legislature, nothing prevents another State in the Union of India to prescribe the standards which are different from those prescribed by the State of which the above mentioned person belongs to or acquire qualifications, thereby depriving such a person of an opportunity of practicing in the other parts of the Union of India. Therefore, to bring about some kind of uniformity in the matter of prescription of the standards of medical education and the standards that are required to be followed in the matter of Professional Conduct, Etiquette and code of Ethics, parliament made law, which is applicable to the whole territory of India.

The Central Act of 1956 provides under Section 24 for an automatic enrollment of names of any one of the medical practitioners, whose name had already been registered in accordance with the local laws of any State in the State Medical Register. The parliament was conscious of the fact that by virtue of the other provisions of the said Act, the academic standards prescribed for the award of a medical degree in this country are uniform and therefore if the name of a medical practitioner is already enrolled on a Register maintained by the State Medical Council (if there is one), he is automatically entitled for enrollment on the national register without any further enquiry as to the credentials of the person. Such a provision does not necessarily mean the parliament denied any further regulatory power to the Indian Medical Council. On the other hand, the language of Sections 10-A and 33 of the Central Act # ( ) makes it abundantly clear that the Parliament entrusted the responsibility of regulating the standards of the medical education as well professional conduct of the medical practitioners by appropriate regulations of the Medical Council of India.

It follows from the above structural arrangement of the two laws (of the State Legislature and the law made by the Parliament), either of such laws or both of them can define a certain professional conduct as impermissible conduct. Such prescriptions of law may not be co-terminus insofar as the areas of professional conduct sought to be covered by each of them respectively are laws may deal with the areas which are larger than areas

dealt with by the other law.

A particular conduct depending on the definitions created by the legislatures referred to above may be misconduct under one law and perhaps can still be a conduct which is not a misconduct or the prohibited conduct under the other law subject of course to the test of a direct conflict between the obligations created by such laws. In such case, it is for the bodies created under the respective laws to deal with those cases depending whether the conduct alleged is

In the present case, the Medical Council of India, as already mentioned, has clearly defined the standards of Professional Conduct, Etiquette and the code of Ethics required to be followed by the medical professionals. Therefore, we do not see any impediment in the Medical Council of India in implementing the standards which it has set up under the above regulations, more particularly, when regulation 8 (2) authorizes the appropriate Medical Council to deal with the cases of professional misconduct. The employment of the expression of appropriate Medical Council occurring under para-8.1 or 8.2 of the Regulations of the Medical Council of India (which are extracted earlier) is only indicate the fact that the Medical Council of India is conscious of the composition that at least in some States in this country, the conduct of the medical professionals is amendable to the jurisdiction of more than one Medical Council i.e., the Medical Council of India and the local Medical Council, in which case, it is open for the other all bodies to deal with the cases of the violation of the “law” relating to the professional misconduct. The appropriateness of the Medical Council in this context in our view depends upon the nature of the allegation of misconduct if the allegation is one of violation of the prescriptions contained under the central law including any subordinate legislation thereunder, the appropriate Medical Council would be the Medical Council of India. If the allegation is regarding the breach of code of conduct prescribed under the local law, then the appropriate Medical Council would be the concerned Medical Council created under the local law.

If that is the correct legal position in the back ground of the abovementioned two enactments and the regulations prescribed above, the Medical Council of India is not without jurisdiction as contended by the learned counsel for the petitioners when it sought to

deal with the cases of the various writ petitioners herein on the ground that they violated the code of conduct as prescribed under the Regulations of 2002.

The next question is as to what is the prohibition of law in which each of the petitioners herein are transacted. In substance, the allegation that in the case of each one of the petitioners, a memorandum of two declarations are given or in some cases, even more are given to the effect that the respective declarants were working as teachers in more than one institution indicated in their respective declarations. At the same point of time, these declarations are construed by the Medical Council of India as misconduct. In the General Body meeting of the Medical Council of India on 10-12-2004, it was recorded as follows:

> "Over a period of last 1-2 years by considering the inspection reports of various medical colleges seeking permissions/renewals under Section 10A of the Act, it was felt and observed that a large number of doctors are claiming employment as medical teachers in more than one medical college at the same time. It was being observed that the names of the doctors shown as medical teachers in a particular medical college were getting repeated in the inspection reports of certain other medical colleges, in the same proximity of time.
>
> Apparently, the medical colleges and the medical teachers were indulging in such activities only to show to the inspection team of the Council that the colleges concerned are fulfilling the minimum requirement for the teaching staff for seeking permissions/renewals under Section 10A of the Act.
>
> The Council, therefore, to curb such unscrupulous tendencies, started adopting methods in this regard. Declaration forms were introduced to be signed by the doctors claiming employment as medical teachers in any given medical college and that they also remain present along with their declarations forms, at the time of the conduct of the inspection of that college.
>
> Subsequently, a provision for endorsement by the Dean/Principal of the medical college was also introduced in the declaration forms to make this requirement more efficient and effective by stating that in the event of any declaration made by a particular medical teacher turns out to be untrue and incorrect, the Dean/Principal of the college putting signatures as endorsement of the truthfulness of the statement made in the declaration would also be held responsible in that event.
>
> Needless to state that the Council has always tried to improve in this regard for ensuing that such misdeclarations/misstatements are completely eliminated or minimized to the extent possible with the clear perception that the Council should taken appropriate action against such erring doctors whenever it is found that the particular doctor has furnished more than one declaration forms towards claiming teaching employment in any medical college when such a doctor has already furnished similar declaration for claiming employment as medical teacher in certain other medical colleges at the same point of time.

> This problem has engaged attention of the Council continuously during the last 1-2 years. The cases have also been considered by the Ethics Committee of the Council. Whenever it has been found that a particular doctor is claiming employment as medical teacher at the same point of time in more than one medical colleges, show cause notices had been issued seeking their replies. They were given due opportunities to present their explanation before the Ethics Committee.
>
> Today, before the General Body of the Council cases of such misdeclarations and misstatements by the medical teachers have been placed for consideration. The Ethics Committee of the Council, after granting opportunity of being heard to all of these doctors, has recommended imposition of punishment of removal of their names from the Indian medical Register maintained by the Council."

In substance, the general body came to the conclusion that each one of these petitioners had made false declarations that they are working in more than one institution at the same time, thereby lending a credibility to those respective institutions to enable those institutions to secure the necessary recognition from the Medical Council of India as contemplated under Section 10 (A) of the Medical Council of India, 1956.

The learned counsel for the respondent-Medical Council argued that such conduct on the part of each of the petitioners is a misconduct falling under para-7.24 of the central Regulations of 2002. In the alternative, the learned counsel submitted that even if the said conduct does not fall under para-7.24, a Medical Council of India is entitled to come to the conclusion that such a conduct is only a prohibited conduct/professional misconduct as contemplated under para-8.1 of the above mentioned Regulations. On an enquiry from the Court whether there is anything in the law that either the statues or in the regulations or rules made under any law prohibiting any Medical professional from being a teacher simultaneously in more than one institution.

The learned counsel for the respondent, Sri S.Niranjan Reddy, on verification from the records made a categoric statement that there is noting in the law either in the statute or under the Regulations of the Medical Council of India by which a medical professional is prohibited from teaching in more than one institute at any given point of time. However, the learned counsel argued that under para-7.24 of the Regulations of 2002, a medical professional working in the medical college or institution is found absent during the duty hours assigned to him on more than two occasions, it would be a professional misconduct. In fact, para-7.24 reads as follows:

> "7.24**.** If a physician posted in a medical college institution both as teaching faculty or otherwise shall remain absent in hospital/college during the assigned duty hours. If they are found absent on more than two occasions during this period, the same shall be construed as a misconduct if it is certified by the Principal medical Superintendent and forwarded through the State Government to Medical Council of India/State Medical Council for action under these Regulations."

Unfortunately, it is not the case of the Medical Council of India that any one of the petitioners was found absent on more than one occasion during the duty ours assigned to them in the teaching institutions in which they have declared to have been working as teachers.

A reading of the show cause notice and the final order in each of these cases leaves us with an impression that the allegation on each one of the petitioners is that they made false declarations that they are working in those several institutions declared by each one of them as teachers, thereby, creating a situation, by which each one of those institutions individually would have the requisite teaching staff enabling them to get the necessary recognition from the Medical Council of India and the Government of India. However, on the facts, it appears to be doubtful whether these petitioners could be simultaneously teaching in more than one institution having regard to the working hours and the relevant time table of those institutions. If factually it is to be found any one or all of these petitioners could not have been simultaneously working in a number of institutions, the declarations given by each of them in our view would amount to a violation of the stipulation contained under para-7.7 of the Regulations of 2002, which reads as follows:

> 7. **Signing professional Certificates, Reports and other Documents:**
>
> Registered medical practitioners are in certain cases bound by law to give, or may from time to time be called upon or requested to give certificates, notification, reports and other documents of similar character signed by them in their professional capacity for subsequent use in the courts or for administrative purposes etc. Such documents, among others, include the ones given at Appendix-4. Any registered practitioner who is shown to have signed or given under his name and authority any such certificate, notification, report or document of a similar character which a untrue, misleading or improper is liable to have his name deleted from the Register."

We are making it clear that we are not ruling out the possibility of a medical practitioner undertaking a teaching assignment in more than one institution at any given point of time as there is no such prohibition in law, the question is whether in fact he or she is teaching as

declined by him or her. If factually any one of the petitioners is not so teaching in more than one institution in our view it would certainly be a violation of para-7.7 of the Regulations of 2002 as a statement or a certificate, which is untrue or misleading.

Unfortunately, none of the petitioners have been put on notice that the charge against them is one under para-7.7 of the Regulations of 2002.

The number of decisions have been cited on either side to show the legal consequences of the nonindication of a precise charge. We do not propose to examine these authorities for the simple reason that the charge against a person making untrue or misleading statement is a charge, which is required to be established on appropriate evidence. The enquiry in our view requires an examination of the facts as to in how many institutions, each one of these petitioners are said to have been teaching and what is the distance to each of those institutions with reference to a particular declarant and what are the hours assigned for teaching in those institutions with reference to that particular practitioner and having regard to the distance between the institutions and the teaching hours assigned to the particular writ petitioner whether it is possible for the person to undertake such assignments.

Neither the charge is clearly indicated nor the enquiry is directed as indicated above.

We do understand the agony or sense of responsibility of the Medical Council of India to curtail the proliferation of medical college without sufficient facilities either in the form of requisite manpower either teaching or non-teaching staff or other facilities. But, at the same time, we can also ignore the fact that by the impugned orders, each one of these petitioners is deprived of a fundamental right guaranteed under the Constitution of India although for a limited period. Such deprivation cannot but be in accordance with the procedure established by law.

For the reasons recorded above, in our view, the petitioners have been deprived of their fundamental right to practice the medical profession. We, therefore, set aside each one of the orders impugned in the several writ petitions. However, we also recognize the fact that there is a serious allegation that some of these institutions, where medical science is taught, have obtained necessary recognition contemplated under Section 10 (A) of the Indian Medical Council Act, 1956 by providing certain false information to the Government of India and the Medical Council of India. An allegation, if proved true, is a matter of serious concern for all. We, therefore, make it clear that it is open to the respondent-Medical Council of India to initiate an appropriate enquiry into the conduct of each one of these petitioners in accordance with law and take appropriate decision depending upon such enquiry report.

Having regard to the gravity of the allegation, we deem it our duty not only to indicate that the respondents have the liberty to initiate such an action in accordance with law but we also direct the respondents to initiate action in accordance with law and take a decision expeditiously.

In the result, the writ appeal and all the writ petitions are allowed as indicated above. But, in the circumstances, no order as to costs.

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JUSTICE J.CHELAMESWAR

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JUSTICE GHULAM MOHAMMED

Dated April 5, 2005.

YCR/PGS

To

1 The Medical Council of India, Aiwan-E-Galib Marg, Kotla Road, Mata Sundari College (For Women), New Delhi.

2 The Secretary, Medial Council of India, Aiwan-E-Galib Marg, Kotla Road, Mata Sundari College (For Women), New Delhi.

3 The Registrar, A.P State Medical Council, Sultan Bazar, Hyderabad.

4 The Secretary, Union of India, Ministry of Health, New Delhi.

5 The Director of Medical Education, A.P.Sultan Bazar, Hyderabad-500 095.

6. The Principal Secretary to Government, Health Medical & Family Welfare Department, Government of Andhra Pradesh, Hyderabad.
7. The Registrar, NTR University of Health Sciences, Vijayawada.
8. The NRI Institute of Medical Sciences, Guntur.

9 The Registrar, Andhra Pradesh Medical Council, Koti, Hyderabad.

10. 2 CCs to G.P. for Medical Health and Family Welfare, High court Buildings, Hyderabad.

11. 2 C.D. copies.